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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MARQUES BROWN,

Plaintiff and Appellant,

v.

CITY OF LOS ANGELES, et al.,

Defendants and Respondents.

B272120

(Los Angeles County  
Super. Ct. No. BS152886)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mary Strobel, Judge. Affirmed.

Ira M. Salzman for Plaintiff and Appellant.

Michael N. Feuer, City Attorney, Blithe S. Bock, Assistant City Attorney, Lisa S. Berger, Deputy City Attorney for Defendants and Respondents.

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## **INTRODUCTION**

The Los Angeles Police Department's (LAPD) Board of Rights found tenured LAPD Officer Marques Brown guilty of misconduct, and the chief of police terminated Brown. Brown petitioned the trial court for a writ of administrative mandate to set aside the Board's decision. The trial court denied the writ. Brown appeals, arguing that insufficient evidence supported the Board's decision. We affirm because Brown failed to furnish this court with the administrative record and has thus forfeited his claims of error on appeal.

## **FACTS AND PROCEDURAL BACKGROUND**

### ***1. Brown's Misconduct***

On January 21, 2013, while on duty as a LAPD officer, Brown had a casual exchange with Diana Livingston-Gomez when they were both standing in line at a Starbucks. She drove home and parked her car outside her residence. Shortly after Livingston-Gomez left Starbucks and before Brown placed his order, Brown went outside the Starbucks for about two minutes. Then, Brown returned and re-took his place in line. Brown received his order and left the Starbucks at approximately 11:00 a.m.

About one hour after the Starbucks encounter, at 11:57 a.m., Brown ran Livingston-Gomez's license plate number and the Department of Motor Vehicles (DMV) information displayed her address. At approximately 1:00 p.m. (two hours after the Starbucks encounter), Brown knocked on the door of Livingston-Gomez's residence. When she opened the door, Brown stated that he was responding to a radio call and asked if anyone inside needed help, had called 911, or was hurt. When Livingston-Gomez stated that she had not called 911, Brown

asked whether she had a fax machine and explained that fax machines sometimes call 911. Brown asked several times if he could enter the residence and look around. Livingston-Gomez denied him entry. Brown asked: “Didn’t I just see you?” Livingston-Gomez responded that he had seen her at Starbucks. Livingston-Gomez felt uneasy about Brown showing up on her doorstep and reported the incident to the LAPD. An Internal Affairs investigation ensued.

## ***2. The Board of Rights Administrative Proceedings and Brown’s Termination***

Brown was charged with three counts of misconduct: (1) inappropriately accessing Livingston-Gomez’s DMV information while on duty with the intent of using the information for unofficial purposes, (2) going to Livingston-Gomez’s residence while on duty with the intent of converting an on-duty contact into an off-duty relationship, and (3) falsifying information on his daily field activity report while on duty.

The Board of Rights proceedings commenced on November 13, 2013 and concluded on July 30, 2014, after several days of testimony and argument. At the hearing, Brown testified that he did not remember running Livingston-Gomez’s license plate number and that he ran approximately 11 vehicle plate numbers on that day. Brown testified that coincidence brought him to Livingston-Gomez’s residence at 1:00 p.m. He stated that he was on patrol when a pedestrian named “McMichael” flagged him down. Brown explained that McMichael, who wanted his report to remain confidential, reported hearing screams coming from the general area of the multi-residence building. Brown then went to investigate and knocked on the door of the residence

identified by McMichael. Livingston-Gomez opened the door of the residence.

Brown testified that he asked Livingston-Gomez whether she made a 911 call or if she had a fax machine as a ruse to maintain the anonymity of McMichael. After Brown left her door, he did not knock on the doors of any other residences. Brown testified that after talking to McMichael, he broadcasted three times that he was on a “Code 6” and reported that he was out of the vehicle on a call. Brown listed the alleged contact with McMichael in his Daily Field Activities Report.

The Board of Rights found Brown guilty on all three charges of misconduct.<sup>1</sup> “The Board found the testimony of Livingston-Gomez to be credible and believed her when she testified she parked her car on the street in front of her residence after she left the Starbucks at 10:54 a.m. . . . This being true, [Brown] would have had to been in the area of Livingston-Gomez’s residence twice within one hour: first to run her license plate; and then, when he was purportedly flagged down by a pedestrian directly in front of the Livingston-Gomez residence. . . . Given the geographic area [Brown] was reported to have been covering, and his two trips to Wilshire Station, his actions seem highly improbable unless [Brown] obtained Livingston-Gomez’s license plate number while he was at Starbucks and ran it after leaving that location, which contradicts his testimony he ran the plate while the car was on the street.” The Board concluded that the series of events as told by Brown were improbable.

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<sup>1</sup> As we do not have a copy of the administrative record, the summary of the Board’s decision comes from the trial court’s summary.

Since Brown had previously served a 14-day disciplinary suspension because he twice tried to contact a woman through Facebook after he came in contact with her during an on-duty traffic stop, the Board recommended termination.<sup>2</sup> The Chief of Police followed the Board's recommendation and terminated Brown on October 1, 2014.

### **3. *Denial of Brown's Petition for Writ of Mandate***

Brown petitioned the trial court for a writ of mandate compelling the City of Los Angeles and the LAPD Chief of Police to set aside their final decision pursuant to Civil Code of Procedure 1094.5. After reviewing the administrative record, the trial court likewise found that "the three events at issue - the encounter at the Starbucks, running Livingston-Gomez's license plate number without apparent justification for police business, and being flagged down by a pedestrian that led [Brown] back to the same person he just met in a Starbucks two hours earlier - surpasses the probability that this sequence was due to chance." The court concluded that "[g]iven the improbability of [Brown]'s account, the reasonable inference is that [Brown] had no official purpose in appearing at Livingston-Gomez's residence and that his intent was to convert on-duty contact into an off-duty relationship. Counts 1 and 2 are supported by the weight of the evidence."

The court also found that the weight of the evidence supported the third count (falsifying his Daily Field Activity Report) because it appeared that Brown authored the report to give the appearance of legitimacy to his second contact with Livingston-Gomez. The court also concluded that given "the

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<sup>2</sup> The Board did not consider this information regarding past discipline during the liability phase of the proceedings.

similarity of his prior discipline, Respondents were well within their discretion in concluding that there was a likelihood of recurrence of the misconduct and that termination was appropriate.”

Brown appeals from the trial court’s denial of his petition for writ of mandate.

## **DISCUSSION**

### **1.     *Standard of Review***

“Termination of a nonprobationary public employee substantially affects that employee’s fundamental vested right in employment. [Citations.] Accordingly, when ruling on a petition for a writ of administrative mandamus seeking review of procedures that resulted in the employee’s termination, the trial court examines the administrative record and exercises its independent judgment to determine if the weight of the evidence supports the findings upon which the agency’s discipline is based or if errors of law were committed by the administrative tribunal. [¶] On appeal we review the trial court’s factual findings for substantial evidence [citations] and its legal determinations—including the constitutionality of the challenged administrative policy—de novo.” (*Bautista v. County of Los Angeles* (2010) 190 Cal.App.4th 869, 874–875; see *Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 811.)

### **2.     *Brown Forfeited His Claims of Error By Failing to Furnish an Administrative Record***

On appeal, Brown provided this court with a copy of the reporter’s transcript from the trial court’s hearing and the clerk’s transcript containing his petition for a writ of mandate, his memorandum of points and authorities in support of that petition, the City’s opposition to the petition, the court’s minute

order, the judgment, and a notice of appeal. Brown failed to provide this court with the administrative record. Without the administrative record we cannot review the trial court's denial of Brown's petition for substantial evidence.

It is well established that a “ ‘judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent.’ ” (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 718.) The appellants bear the burden of affirmatively showing prejudicial error, (*City & County of San Francisco v. Funches* (1999) 75 Cal.App.4th 243, 244-245) and must “provide an adequate record to assess error.” (*Nielsen v. Gibson* (2009) 178 Cal.App.4th 316, 324.) The appellants “must not only present an analysis of the facts and legal authority on each point made, but must also support arguments with appropriate citations to the material facts in the record. If [they fail] to do so, the argument is forfeited.” (*Ibid.*)

As Brown has failed to provide us with the administrative record, he has forfeited his arguments on appeal.<sup>3</sup> We both presume the trial court's judgment is correct and observe that contained within the trial court's 19-page ruling is citation to ample evidence to support its decision and the decision of the Board. (*Barak v. Quisenberry Law Firm* (2006) 135 Cal.App.4th

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<sup>3</sup> In his reply brief, Brown argues in a conclusory fashion that he “has presented sufficient documents. . . to make a finding that the trial court abused their [sic] discretion.” As noted above, we cannot do a substantial evidence review without the evidence, which is entirely located in the administrative record.

654, 660 [“Failure to provide an adequate record on an issue requires that the issue be resolved against appellant.”].)

**DISPOSITION**

We affirm the judgment. Defendants City of Los Angeles and Charles Beck are awarded costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

FLIER, J.